

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DAVID ELMO CURRY,

Defendant.

**Case No. 1:21-CR-2053-SAB-1**

**CRIMINAL MINUTES**

**DATE: DECEMBER 4, 2023**

**LOCATION: YAKIMA, WA**

**FINAL PRETRIAL CONFERENCE**

**JURY SELECTION**

**JURY TRIAL – DAY ONE**

**Chief Judge Stanley A. Bastian**

Michelle Fox <b>Courtroom Deputy</b>	02 <b>Law Clerk</b>	Marilynn McMartin <b>Court Reporter</b>
Michael Murphy <b>Government Counsel</b>	Craig Webster Juliana Van Wingerden <b>Defense Counsel</b>	

☒ **Open Court**

☐ **Chambers**

☐ **Telecon/Video**

Defendant Curry present and out of custody of U.S. Marshal.

**Final Pretrial Conference**

Court addresses counsel.

M. Murphy estimates the government will rest on Tuesday if get through 2 witnesses today. 3 days is a good estimate. C. Webster estimates 3 days.

Court will exclude witnesses.

M. Murphy filed an amended exhibit list on Friday. Changed detective because Detective Morgan was not available so Officer McDonald will testify.

**[ X ] ORDER FORTHCOMING**

<b>CONVENED: 8:30 A.M. 10:10 A.M. 11:35 A.M. 2:30 P.M. 4:30 PM</b>	<b>ADJOURNED: 9:03 A.M. 11:20 A.M. 1:43 P.M. 4:02 PM 5:04 PM</b>	<b>TIME: 33 MIN. 1 HR. 10 MIN. 2 HRS. 8 MIN. 1 HR. 32 MIN. 34 MIN. TOTAL: 5 HRS. 57 MIN.</b>	<b>CALENDARED [ X ]</b>
--	--	--	-------------------------

*United States –vs- D. Curry*

1:21-CR-2053-SAB-1

Final Pretrial Conference/Jury Selection/Jury Trial – Day One

December 4, 2023

Page 2

Court confirms there are 2 counts for trial. M. Murphy indicates yes.

C. Webster states there is concern with the amended exhibit list. There is a confrontation clause issue but ready to proceed.

Court wants to know if ready to proceed or if need time to speak to a witness. C. Webster is not requesting a continuance but wanted the Court to know.

C. Webster wants to make sure there is no Henthorn documents or further discovery.

M. Murphy states no.

M. Murphy addresses the confrontation clause.

Court discusses the entrapment defense. Instructions will be provided today with draft instructions to review.

Court outlines voir dire and challenges. Court allows back strikes.

Court and counsel discuss alternates. Should we need an alternate.

M. Murphy requests 1 alternate.

C. Webster does not object to 1 alternate.

Court will select an alternate randomly until the end of trial.

Court and counsel review exhibits. Hoping to get most pre-admitted. Government has 24 exhibits. Any objections to admission.

C. Webster addresses the video. Entire video should be played. Exh. 1-4 are clips. Exh. 17-20 are email exchanges and Exh. 21 and 22 are text messages. No objection but want entire video, emails and text messages. Exh. 111 is the entire video.

M. Murphy states the segments are appropriate on direct but do not object to Exh. 111.

Court admits Exh. 1, 2, 3, 4.

M. Murphy stipulates to 111 and all of defendant's exhibits are agreed to.

**Court admits Exhibits 101-113 inclusive. Court admits Exhibits 1-24 inclusive. Court admits all exhibits, but only the exhibits used during trial will go back to the jury.**

M. Murphy will lay foundation to admit 5-24. Court has admitted all exhibits. M. Murphy misunderstood.

Recess: 9:03 am – 10:10 am

### Jury Selection

Court welcomes the jury. Court explains trial procedure. Court gives preliminary comments. Jury qualification oath given to jury. Court gives preliminary instructions to the jury.

Voir dire conducted.

Recess: 11:20 am – 11:35 am

Voir dire continues. During voir dire, the Court excuses Nos. 11, 6, 39.

Side bar conducted for challenges. Defendant waives his presence for the side bar. M. Murphy presents argument on challenges for cause, No. 33. C. Webster presents argument on challenges for cause, Nos. 41, 16, 18. Court excuses No. 33 for cause.

Preemptory challenges taken.

1:30 pm - Jury selected. Nos. 2, 3, 4, 7, 9, 10, 19, 20, 24, 25, 27, 31, 35 selected.

*United States –vs- D. Curry*

1:21-CR-2053-SAB-1

Final Pretrial Conference/Jury Selection/Jury Trial – Day One

December 4, 2023

Page 3

Court thanks all the jurors.

Jurors not selected excused at 1:34 pm.

Jury sworn in. Court gives preliminary comments to the jury. Jury excused for lunch at 1:37 pm. Reconvene at 2:30 pm.

Court asks if there are any Batson challenges. M. Murphy indicates no. C. Webster indicates no.

Court summarizes challenges for cause at side bar. Court granted motion and excused No. 33. Court did not excuse for cause Nos. 16, 18, 41.

C. Webster asks the Court to summarize procedure for this Court. Court summarizes trial procedures.

M. Murphy summarizes witness schedule.

Recess: 1:43 pm – 2:30 pm

Court addresses counsel. Counsel do not have any issues to discuss.

Jury reconvenes: 2:35 pm

Court reads preliminary jury instructions to the jury.

2:55 pm - M. Murphy presents opening statements.

3:04 pm - C. Webster presents opening statements.

**Darren Pitt** is sworn in and questioned by M. Murphy. Exh. 1, 2, 3, 4 shown and played to the witness and jury. Exh. 5 discussed.

3:30 pm – C. Webster cross examines witness. Exh. 111 shown and played to the witness and jury.

Jury recess: 3:58 pm

Court addresses schedule with counsel. M. Murphy responds. C. Webster responds.

Recess: 4:02 pm – 4:30 pm

Jury reconvenes.

Court explains to the jury how to use the headsets to hear Exh. 111.

**Darren Pitt** retakes the stand. Exh. 111 continues to play for witness and jury. Cross continues.

No redirect.

Witness excused at 5:00 pm.

Court admonishes jury. Reconvene tomorrow at 8:30 am. Jury excused at 5:03 pm.

Court addresses counsel.

Counsel have no issues.

Recess: 5:04 pm. Reconvene tomorrow at 8:30 am.